Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 275. Equity.

LONE WOLF, Chief of Kiowa Indians, *et al.*,
Appellants,
v.
E. A. HITCHCOCK *et al.*, Secretary of the Interior,
Appellees.

Reply Brief of Appellants in Opposition to Motion to Dismiss Appeal.

STATEMENT.

The motion to dismiss the appeal in this case states that "since the decree in the Supreme Court of the District of Columbia denying the injunction, the status of the lands in controversy and the position of the parties in interest have so far changed, that of the things sought to be enjoined nothing remains undone, the doing of which can now be enjoined in this suit."

Then follows an affidavit of Ethan A. Hitchcock, one of the Respondents, in support of the motion to dismiss the appeal. The affidavit sets forth the things that have been done since the case was disposed of in the trial court.

A careful examination of this statement reveals the fact that there are many acts, which must be done hereafter, before the act of Congress of June 6, 1900, is carried into full force and effect. Among them may be noted the following:

1. Patents have not been issued to the purchasers of town lots.

2. Patents have not been delivered to the allottees of allotted lands. The act of Congress of June 6, 1900, provides (Article V) that the titles thereto shall all be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the act of Congress, approved February 8, 1887, known as the Land in Severalty Act. Hence twenty-five years must elapse before this part of the act can be carried into full effect.

3. The affidavit states (page 5) that entries of homesteads and town-sites aggregating more than 7,500 acres have been carried to find proof, upon some of which patents have been issued. As nearly two million acres of these lands are occupied as homesteads and town-sites, and as only 7,500 acres have been carried to final proof, and as only on "some of which" (the amount is not stated) patents have issued, the amount of land not yet patented must amount to more than one million nine hundred thousand acres.

4. The Respondent, E. A. Hitchcock, in his affidavit filed in the court below (Record, pages 17 and 18), states that complainant Lone Wolf and the other Indians of said tribes, have selected the allotments under the act of June 6, 1900, and, as provided for in said act. But Lone Wolf, in his own affidavit (Record, pages 18 and 19), asserts that he has not accepted an allotment of land under said act; that he is occupying certain lands in the reser-

vation, and he assumes such lands will be allotted to him wherever a legal allotment is made, and he asserts that by no act of his own has he ever recognized the validity of the so-called Jerome treaty, and that he is informed and believes that substantially all the members of said Indian tribes are opposed to the said Jerome treaty, and that they have not done any act which they regard as a ratification of said treaty.

The other parties complainant in said suit filed in the court below (Record, pages 22, 23 and 24) a petition to be made parties complainant, which is sworn to by all of them, eight in number, in which petition a detailed statement of the position of the Indians interested is made. It is distinctly stated "that the entire lawful membership of said tribes is opposed to the said Jerome treaty, and especially opposed to the opening of any of their lands to settlement by white people; that they have never accepted allotments of their lands to the extent of approving said allotments; that they were told by allotting agents that they must select land to be allotted to them or said agents would make the selections which might be on poor land, and that they would be obliged to accept whatever allotments might be assigned to them."

5. The Respondent, E. A. Hitchcock, in his affidavit printed with the motion to dismiss (page 5) states, on information and belief, that since the rendition of the decree of the trial court in this case, 526 male adults of said Indians, being more than three-fourths of the total number of the male adults of said tribes, signed and presented to the Secretary of the Interior a petition, the text of which is printed on page 6 of the motion to dismiss the appeal. This petition states that the Indians "do make formal request and pray that the benefits in money provided for as by the act of Congress approved June 6, 1900,

may be paid to us in accordance with the terms and provisions of said act of June 6, 1900, and with as little delay as is consistent." "Thereafter," said affidavit states, "and in pursuance of said petition and of the provisions of Article 6 of the Comanche, Kiowa, and Apache agreement, amended and ratified by said act of June 6, 1900, there was paid and distributed per capita to the members of said tribes upward of $130,000 of the $500,000 mentioned in said Article 6, as part compensation for the lands ceded to the United States by said agreement, that the per capita payment and distribution so made was accepted by every adult member of the Apache tribe, and excepting 21 members thereof, by every adult member of the Kiowa tribe." An extract from the letter of the Indian agent in charge of the Kiowa agency explaining in what manner he procured the names to said petition is printed (page 7).

The court is respectfully referred to the affidavits and letters printed herewith in order to show how the names of the Indians were procured to said petition, and the manner in which payments were made, as understood by the Indians.

6. According to the Secretary's affidavit only $130,000 of the $500,000 appropriated by Congress have been paid out to the Indians. There still remains $370,000 of said appropriation to be paid out. And by the terms of the act of June 6, 1900, no part of the remaining $1,500,000 has been appropriated as yet, and the Indians are to receive five per cent. interest on the same until it is paid to them.

There are many other things sought by the bill of complaint to be enjoined, which have not yet been done or accomplished. But the things above mentioned will serve to illustrate that there are many very important things

which may be enjoined if this cause is remanded, with direction to the court below to grant appellants' prayer for relief by enjoining all acts of appellees which have not yet been performed in carrying said act of June 6, 1900, and other acts supplemental thereto, into effect. And as all, or nearly all, the acts of appellees, in carrying into effect the provisions of said acts were done *pendente lite*, and as there is in the bill a prayer for general relief, it would be competent for the court below, in order to fully carry into effect the opinion of this court, to issue a mandatory injunction requiring appellees to recall and cancel many of the acts already committed by them ; such, for instance, as the setting aside of a forest reserve, and the approval of the educational grants to Oklahoma, and many other acts which might be mentioned.

BRIEF AND ARGUMENT.

I.

The case at bar was disposed of in the court below on demurrer, which was sustained and, appellants standing on their bill of complaint, it was dismissed. The question before this Court is as to whether the Court below erred in sustaining the demurrer upon the bill of complaint and the facts stated therein. If this court should hold that no error was committed, the judgment of the court below will be affirmed. This will end the litigation so far as this suit is concerned. If this court should hold that the court below erred in sustaining the demurrer and in dismissing the bill, upon the facts therein stated, the judgment will be reversed, and the cause remanded with direction to proceed further, as the mandate of this court may direct. If new facts of estoppel *in pais* are relied

upon they must be specially pleaded or set up in an answer. The trial court alone can consider such facts, in the first instance, and determine their force and effect.

A final decree is not entered on overruling a demurrer, as defendant is entitled, on obtaining leave, to put in an answer to the bill.

6 Encyc. of Pleading and Practice, 430, 431, and numerous authorities therein cited in note one, page 431.

II.

Ordinarily a decree of an appellate court overruling a demurrer and remanding the cause to be proceeded with is not an adjudication of anything more than that there is sufficient equity upon the face of the bill to require an answer.

Id. page 432, and numerous authorities cited in note 8.

III.

The fact supporting an estoppel *in pais* must be clearly made out by the party relying upon it. He must allege that the party to be estopped has been guilty of misrepresentation or conduct inconsistent with the evidence he proposes to give, or the title or claim he proposes to set up. He must also allege that such misrepresentation or conduct was with intent to mislead; that the representations were known to the maker to be false, or that they were made with gross negligence, and that the fact of their being false was not known to the party setting up the estoppel. It must be shown that the party pleading the estoppel acted to his prejudice on such representations,

and that he will be prejudiced by allowing them to be disproved.

8 Encyc. of P. and P., pp. 10, 11, 12, and numerous authorities cited in note 6, on page 10, and notes 1, 2, 3, 4, 5 and 6, on page 11, and note 1 on page 12.

IV.

It may be stated, as a general rule, that the representation or concealment relied on to sustain an estoppel, must have been made with full knowledge of the facts by the party to be estopped, unless his ignorance was the result of gross negligence, or otherwise involves gross culpability, as where he is consciously ignorant of the facts at the time of professing full knowledge of them.

11 Am. and Eng. Encyc. of Law, second edition, pp. 433–434, and authorities cited in notes 2 and 3, on page 433, and note one, on page 434.

V.

It may also be stated, as a general rule, that it is essential to the application of the principle of equitable estoppel that the party claiming to have been influenced by the conduct or declaration of another to his injury was himself not only destitute of knowledge of the state of facts, but was also destitute of any convenient or available means of acquiring such knowledge, and that where the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.

Id. p. 434, and numerous authorities under note 6.

VI.

Another essential element of estoppel by misrepresentation or concealment is that one party should have relied

upon the conduct of the other and been influenced by it to act or to refrain from acting so that he will be substantially injured if the other party should be allowed to repudiate his action. And this rule applies as well where the conduct of the party to be estopped consists of silence as where it consists of positive acts.

Id. pp. 436–438, and authorities cited in note 5, on page 436, and notes 1 and 2, on page 438.

VII.

The motion to dismiss the appeal filed herein states that 526 male adults of the Indian tribes signed a petition for the distribution of money under the act of June 6, 1900.

Admitting for the sake of the argument that the persons who signed this petition are now estopped from denying the validity of the act of Congress in question, yet it cannot be maintained that the other members of the tribe were prejudiced by the fact. There are about 2,800 members of the tribes interested.

This leaves nearly 23,000 who have not been guilty of any act incurring equitable estoppel. The adults who did not sign, and the married women and infants cannot, in any view of the case, be held responsible for the conduct of those who signed the petition.

It seems to be agreed in almost all jurisdictions that to estop a married woman from asserting her rights in land, it is essential that she should be guilty of some positive act of fraud, or else of some act of concealment or suppression, which in law would be equivalent thereto; for all who deal with a married woman directly, or deal in any manner affecting her rights, are chargeable with the knowledge of her disability, and that she can only convey land in the manner provided by statute.

15 Am. and Eng. Encyc. of Law, second edition, page 802, and authorities cited in note 7.

VIII.

It is one of the peculiar duties of courts of equity to protect the rights of infants, and equity has plenary jurisdiction for that purpose.

Whenever a suit is instituted in the court of chancery relative to the person or property of an infant, although he is not under any general guardian appointed by the court, he is treated as a ward of the court, and as being under its special cognizance and protection.

The court protects the infant fully and will not allow his rights to be prejudiced by any act either of his own or of any other person.

In accordance with the rule that an infant cannot be prejudiced by any act of his own, or of any other person, his rights cannot be affected by laches.

On the same principle no decree can be taken against an infant on his own admissions or consent.

10 Encyc. of Pleadings and Practice, 588, 589, 590, 591, and authorities therein cited.

IX.

A trustee who has accepted a trust will be estopped to set up title adversely to his *cestui que trust.*

11 Am. and Eng. Encyc. of Law, second edition, 444, and note 4, citing Willison *v.* Watkins, 3 Pet. (U. S.) 48; Inby *v.* Kitchell, 42 Ala. 438; and other authorities.

The same principle has been applied to the relation of guardian and ward.

Id. 444, note 5, citing Burke *v.* Turner, 90 N. Car. 588.

In the case at bar, the Government of the United States, it has been contended, is the guardian of the Indians, who are appellants and respondents, are the agents of the Government. The Indians, all of them without regard to age, are the wards of the Government. In one sense the Government is the trustee and the Indians the *cestui que trust*.

In either relation, the Government cannot take any advantage of their acts, either as wards or as *cestui que trust*. They are all incapable of committing acts of equitable estoppel; and especially are those among them who are minors or married women.

X.

The Record does not disclose to whom per capita payments to married women and minors are paid. But it is a well-known fact that in making such payments to Indians it is the custom to pay to the heads of families the amounts due to their wives and children.

Hence by no act of the married women and the minors, who are members of said Indian tribes, can it be said that they have requested payments, or that they have accepted payments of any part of the purchase money appropriated by Congress to be paid for their lands. And as to the male adults over 21 years of age, counsel for appellees contends that they are also the wards of the Government, and stand in the same position as do white persons who are minors, and persons *non compos mentis*.

XI.

Attention of the Court is called to the language of Article 12 of the Medicine Lodge Treaty (Record, page 4).

Under the provisions of said article, the right of occupancy of the lands in question was not to be taken away from said Indians, except by treaty, "executed and signed by at least three-fourths of all the adult male Indians occupying the same."

The attention of this Court is also called to section 2116 of the Revised Statutes of the United States, which is as follows:

"SEC. 2116. No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of one thousand dollars."

Article 12 of the Medicine Lodge Treaty, and the foregoing section of the Revised Statutes, show how carefully Congress has safeguarded the rights of Indians to the lands which they occupy. Any act on their part which affects the title to their lands must be evidenced by a properly signed and executed treaty or agreement, and such treaty or agreement must be negotiated by duly authorized agents of the Government.

In view of these provisions of the treaty and of an act of Congress, how can it be contended, for a moment, that 526 male adults, out of a total of 2,800 Indians, whose rights are affected, can validate, by acts of estoppel *in pais*, a sale of two million acres of their lands to the United States, which sale has no other warrant in fact than that which grows out of such acts of estoppel?

XII.

It is conceded that where everything sought to be enjoined has been accomplished before final hearing, an injunction will be refused. Of what use would an injunction be when there was nothing to be enjoined? But in the case at bar, the things which it is sought to enjoin have only partially been accomplished. And where any part of the things sought to be enjoined are still, on final hearing, unperformed, the court will enjoin the commission of such acts, if it should appear that the complaint sets forth good grounds for equitable relief.

Holmes *v.* Calhoun Co. (Iowa, 1896), 66 N. W. Rep. 145; Goodson *v.* Richardson, 43 C. J. Ch. 790; Holmes *v.* Upton, L. R. 9 Ch. 214, note 2.

XIII.

During the argument of the case at bar, Mr. Justice White requested Mr. Carson to state whether any question had arisen as to the right of an Indian, the head of a family, to take a homestead of 320 acres of land under the last clause of Article 12 of the Medicine Lodge treaty. Mr. Carson inadvertently omitted to make any response to the request. The fact is, that at the time the bill of complaint was filed in the trial court the allotments had not been made, and no allegation of deprivation of rights was made in the bill on account of the conflict between the last clause of Article 12 of the treaty and the act of Congress of June 6, 1900. The fact was recited in the bill of complaint (Record, p. 4), that by the terms of Article 12 each head of a family had the right to acquire 320 acres of land for his exclusive use.

The provisions of the act of Congress limited each allottee to 160 acres. We have since learned that several cases have arisen, in which allottees claim 320 acres instead of 160, which were allowed them in the first instance. The cases have not as yet been finally disposed of in the Department. If this Court should hold that property rights acquired under the treaty of Medicine Lodge cannot be abrogated, except in the manner provided in said treaty, then those heads of families, who have heretofore selected 320 acres of land, will be entitled to hold that amount; but should the act of June 6, 1900, be upheld and declared valid, no more than 160 acres of land can be allotted to any member of the tribe.

XIV.

Counsel for appellees in his brief filed in this Court, pages 63 and 64, cites the case of the M., K. & T. R.R. Co. *v.* Roberts (152 U. S. 14), in support of the contention "that Congress may terminate or extinguish the Indian right of occupancy as to all or a portion of the lands reserved by a previous treaty." A careful examination of the facts in that case, and of the opinion of the court therein, will conclusively show that the case is not in point.

The opinion states (page 117) that the contention in that case was "a question of governmental policy, and is not a matter open to discussion in a *controversy between third parties neither of whom derives title from the Indians.* And by the terms of the treaty between the Osage Indians, proclaimed in January, 1865 (14 U. S. Stats. 687), it was provided in Article XI that "railroad companies, when the lines of their roads necessarily pass through the lands of said Indians, shall have the right

of way *upon payment of fair compensation*." This treaty was proclaimed in September, 1865, and Congress made the grant of right of way to the M., K. & T. R.R. Co. July 26, 1866. There was no conflict between the treaty of 1865 and the act of 1866. The railroad company had undoubtedly paid the Indians "a fair compensation" for the right of way, as there is nothing in the Record in the Roberts case to show that the Indians had ever objected to the railroad company's occupation of the right of way. The contest in the Roberts case was between third parties, neither of whom derived title from the Indians. It is not in point as an authority in the case at bar.

XV.

Counsel for appellees cited the case of Spalding *v.* Chandler (160 U. S. 394). This case is not in point. By the provisions of the treaty between the United States and the Chippeway tribe of Indians of 1820, the Indians ceded their lands at the Sault-Ste-Marie, in Michigan, to the United States. By the third article of the treaty it was provided that "the United States will secure to the Indians a perpetual right of fishing at the Falls of St. Mary's, and also a place of encampment upon the tract hereby ceded, convenient to the fishing ground, which place shall not interfere with the defences of any military work which may be erected, nor with any private rights."

It will be observed that the right secured to the Indians was "a perpetual right of fishing at the Falls of St. Mary's, and also a place of encampment upon the tract hereby ceded, convenient to the fishing ground." This right was enjoyed by about 40 lodges of Indians, containing a population of two hundred souls. But in 1855 (11 U. S. Stats., 631), the Indians voluntarily released to

the United States by a treaty this privilege retained by them in 1820. Hence at the time the case of Spalding *v.* Chandler was pending (1895) there was no question as to the fact that the entire Indian title to the land in question had been extinguished with the consent of the Indians interested. And as in the case of Roberts, *supra*, the Spalding case was between third parties, neither of whom derived title from the Indians. The language of this Court in the Spalding case to the effect that "the power existed in Congress to invade the sanctity of the reservation and disregard the guarantee contained in the treaty of 1820, even against the consent of the Indians, party to that treaty," does not go to the extent of holding that Congress has the power to deprive an Indian tribe without its consent, of the use and occupancy of lands secured to it by a solemn treaty for the absolute and undisturbed use and occupation as a permanent home, with a guarantee that no treaty for the cession of any part of the land should be of any validity or force against said Indians unless executed and signed by three-fourths of all the adult male Indians occupying the same. The right to fish in a river and to occupy a place of encampment convenient to the fishing ground is not comparable to the right which appellants in the case at bar secured under the treaty of Medicine Lodge in 1868. But, if for the sake of argument it should be conceded that Congress has, in one instance, taken for right of way of a railroad company a part of an Indian reservation without the consent of the Indians, and, in another instance, has taken, without their consent, from about 200 Indians the right to fish in the St. Mary's river, and to have an encampment on the banks of the river for their occupation, yet notwithstanding these alleged instances of arbitrary appropriation of lands, the occupancy of which had been

secured to the Indians by treaty stipulations, such instances cannot be cited as controlling against the numerous authorities cited in appellant's brief in this case, showing the absolute right of Indians to the use and occupancy of lands secured to them by treaties with the United States, until they voluntarily relinquished the same.

XVI.

A motion to dismiss the appeal in the case at bar was made by appellees in the Court of Appeals of the District of Columbia. Appellants filed a brief in opposition to said motion in said court, a copy of which is attached hereto, and attention of this court is called to the facts stated, and the authorities cited therein, in support of appellants' contention at that time.

In Conclusion.

Appellants insist that the motion to dismiss the appeal in this case should be overruled for the reasons above stated, which are, briefly, as follows:

1. That the things sought to be enjoined by the bill of complaint have not been accomplished.

2. That the doctrine of estoppel *in pais*, invoked by appellees, has no application to the facts in the case at bar, and

3. That, as this case was disposed of in the trial court on demurrer, the only question before this court is as to whether the court below erred in sustaining the demurrer and in dismissing the bill of complaint, upon the facts stated therein. If new facts are to be relied upon as matters of defence, they must be pleaded in the trial court

after the demurrer has been overruled by this court and the cause remanded for further proceedings in accordance with its judgment and opinion.

Respectfully submitted.

HAMPTON L. CARSON,
WILLIAM M. SPRINGER,
Solicitors for Appellants.

AFFIDAVITS.

I.

Affidavit of Lone Wolf, March 4, 1902.

TERRITORY OF OKLAHOMA, }
Kiowa County, } *ss:*

Lone Wolf, a member of the Kiowa, Comanche, and Apache consolidated tribe of Indians, being duly sworn, on his oath deposes and says: That he is one of the complainants in the case of Lone Wolf and others against the Seretary of the Interior and others, and also one of the complainants in the case of the same parties against the Secretary of the Treasury. That the first-mentioned suit is pending in the Court of Appeals of the District of Columbia, and the other case is pending in the Supreme Court of the District of Columbia. That this affiant and the other parties complainant were duly authorized to cause suits to be brought to prevent the opening of their lands to settlement by white men and to prevent the sale of their surplus lands under pretended acts of Congress, and that the authority was given as stated in their bills of complaint filed in said suits. That this affiant is informed and believes that Quanah Parker and Ah-pe-ah-ton, members of said tribe of Indians, have been procuring the names of Indians belonging to said tribe to a petition, addressed to the Secretary of the Interior, praying him to pay out to said Indians the appropriation of $500,000 in

payment for their surplus lands. That said Parker and Ah-pe-ah-ton have informed said Indians that if they did not sign said petition they would be out of their money for good, and that not a cent of money would be paid to them for their lands.

That said parties also informed said Indians that if said Indians did not sign said petition they would lose the 480,000 acres of their land reserved for their common use. That this affiant is informed and believes that said Parker and Ah-pe-ah-ton are about to depart for the City of Washington, with the sanction of the Indian Agent to present said petition to the Secretary, and that this petition is a part of a conspiracy to procure the dismissal of the said suits now pending in the courts of the District of Columbia, and thus to thwart, by fraud and misrepresentations, the effort of this affiant and the other authorized agents of said tribe who are complainants in said suits, in their efforts to protect in the courts the rights of all the Indians of said tribe, secured to them by a solemn treaty with the United States.

Affiant, therefore, earnestly protests against said petition receiving any consideration, either by the Secretary of the Interior or by the courts.

And further affiant saith not.

LONE $\overset{\text{his}}{\underset{\text{mark.}}{\times}}$ WOLF.

Witnesses:

ALMA BIG TREE,

AHTAPE LONE WOLF.

Subscribed and sworn to before me, a notary public, in and for the county of Kiowa, in the Territory of Oklahoma, this day of March, A. D. 1902. The said affiant, Lone Wolf, is personally known to me, and said affidavit

was read to him and duly interpreted in my presence by James Waldo, whose affidavit is hereunto attached.

[L. S.] C. GREENLAND,
Notary Public.

My commission expires August 5, 1905.

I, James Waldo, of Oklahoma, in the county of Kiowa, and Territory of Oklahoma, being duly sworn according to law, do depose and say that I understand the Kiowa Indian language and the English language; that I truly interpreted said affidavit to which the said Lone Wolf has signed his name to him, and that I interpreted to him the oath to the truth thereof, and that he fully understood the same, and that he signed and swore to the same of his own free will and accord.

And further deponent saith not.

JAMES WALDO.

Subscribed and sworn to before me, a notary public, within and for the county of Kiowa, this 4th day of March, A. D. 1902.

[SEAL.] C. GREENLAND,
Notary Public.

II.

Affidavit of Go-te-bo, Sept. 18, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } *ss:*

Go-te-bo, one of the headmen of the Kiowa tribe of Indians, and member of the consolidated tribe of Comanche, Kiowa, and Apache Indians, in the Territory of Oklahoma, being duly sworn upon his oath, says that he is one of the complainants in the suit of Lone Wolf and others against the Secretary of the Interior (E. A. Hitchcock) and others, now pending in the Supreme Court of the United States; that he is informed that an effort will

be made to have the appeal in said suit dismissed on the ground that the said Kiowa, Comanche, and Apache Indians have accepted a part of the payment for their surplus lands, from the United States, in a per capita payment made to said Indians in the month of July, or at any other time, which was made by the Indian agent for said tribe of Indians.

This affiant states, upon his oath, that he did not accept said per capita payment, or any part thereof, nor any portion of said purchase money for the sale of tribal lands, has not been accepted by this affiant at any time; that divers threats were made by the said Indian agent to induce the members of the above-named tribes to accept said purchase money, among others it was stated that if they, the said Indians, did not then accept said funds, they would at no future time be paid any part thereof, and that no other benefits would be given any of such Indians who refused to accept such purchase money. The affiant further states that the said Indians were urged to accept said payment on the ground that it was their duty to accept what was offered to them by the Indian agent without inquiring what money it was that was being paid to them.

Affiant further states that he relies upon securing a decision from the Supreme Court of the United States in the said suit above mentioned in favor of himself and all the members of the said consolidated tribe of Indians, and that he has done nothing, and will do nothing that will in any manner prejudice his rights to recover a judgment in said suit.

GO-TE-BO. his × mark

Attest:

I. W. GRAY.

B. J. DAUGHERTY.

Subscribed and sworn to before me, a notary public in and for the Territory of Oklahoma, this 18th day of September, 1902.

ISAAC W. GRAY,
Notary Public.

My commission as notary public expires April 6, 1903.

UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

Alma B. Ahotah, being first duly sworn according to law, says: That she speaks and writes the English language, and understands the same, and speaks and understands the Kiowa Indian language, being a member of the Kiowa tribe of Indians in Oklahoma Territory. The affiant further states that she correctly interpreted the foregoing statement to Go-te-bo, a member of the Kiowa tribe of Indians, in which he declares among other things that he has accepted no part of the purchase money for their tribal lands, which was agreed to be paid to said Indians by virtue of an act of Congress. The affiant futher states that she believes that the said Go-te-bo fully understood the nature of the instrument before signing the same under oath, as hereinbefore set forth.

ALMA B. AHOTAH.

Subscribed and sworn to before me, this 18th day of September, 1902, at my office in the city of Mountain View, Territory of Oklahoma.

ISAAC W. GRAY,
Notary Public, Territory of Oklahoma.

My commission as notary public expires April 6, 1903.

III.

Affidavit of Lone Wolf, September 19, 1902.

UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

Lone Wolf, a chief and headman of the Kiowa tribe of Indians, and a member of the consolidated tribe of Comanche, Kiowa and Apache Indians in the Territory of Oklahoma, being duly sworn according to law, deposes and says: That he is one of the complainants in the suit of Lone Wolf and others against Ethan Allen Hitchcock, the Secretary of the Interior, and others, now pending in the Supreme Court of the United States; that he is reliably informed that an effort will be made to have the appeal in said suit dismissed on the ground that the said Comanche, Kiowa and Apache Indians have accepted a part of the purchase price for their surplus lands as provided for by Congress, such payment of money being made by the Indian agent for the said tribe of Indians, and more particularly a payment alleged to have been made during the month of July, 1902.

Lone Wolf, the affiant, states upon his oath, that he has accepted no part of the fund provided for the payment for the surplus lands of the said Indian reservation; that although various methods have been resorted to to induce this affiant to accept said purchase money he has uniformly refused to accept any portion thereof.

This affiant further states that he relies upon securing a decision from the Supreme Court of the United States in the said suit first above mentioned in the favor of himself and all the members of the said consolidated tribe of Indians, and that he has done nothing and will do

nothing that will prejudice in any manner his rights to recover a judgment in said suit.

his
LONE × WOLF.
mark

Attest:

G. W. HICKS.
G. B. SUTTON.

Subscribed and sworn to before J. P. Whatley, a notary public in and for Kiowa County, Territory of Oklahoma, this 19th day of September, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } *ss*:

Willie Monay, being first duly sworn according to law, upon oath says: That he speaks and writes the English language and understands the same, and speaks and understands the Kiowa Indian language, being a member of the Kiowa tribe of Indians in the Territory of Oklahoma. The affiant further states that he correctly interpreted the foregoing statement to Lone Wolf, a member of the Kiowa tribe of Indians, in which Lone Wolf states that he has accepted no part of the fund authorized by the Congress of the United States to be paid to the Comanche, Kiowa, and Apache tribe of Indians as the purchase price for their surplus lands. The affiant believes that Lone Wolf fully understood the nature and contents of the said instrument before signing the same, and that he signed the same in the presence of this affiant.

WILLIE MONAY.

Attest:

G. W. HICKS.

Subscribed and sworn to before me, a notary public in and for Kiowa county, Territory of Oklahoma, this 19th day of September, 1902.

J. P. WHATLEY,
Notary Public in and for Kiowa County,
Territory of Oklahoma.

My commission as notary public expires September 5, 1903.

IV.

Affidavit of Ko-mal-ty, Little Bow, and Poor Bear, September 19, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } ss:

Ko-Mal-Ty, Little Bow, and Poor Bear, Kiowa Indians and members of the consolidated tribe of Apache, Kiowa, and Comanche Indians in the Territory of Oklahoma, being duly sworn according to law, depose and say: That they are complainants in the suit of Lone Wolf and others against Ethan Allen Hitchcock, the Secretary of the Interior, and others, now pending in the Supreme Court of the United States; that they are informed that an effort will be made to have the appeal in the said suit dismissed on the ground that the said Comanche, Kiowa, and Apache Indians have accepted a part of the payment provided for by Congress of the United States for the use of the said Indians as part payment for the surplus lands of their reservation, and more particularly that the said Indians have accepted a payment for such surplus lands made during the month of July, 1902, by the Indian agent for the said Indians.

The affiants state upon oath that they have accepted no portion of the fund offered to them for the surplus lands as stated, and that although different plans were adopted whereby it was thought the affiants might be induced to accept a part of said purchase money, they have uniformly refused the same.

The affiants further state that they rely upon securing a decision from the Supreme Court of the United States in the said suit first above mentioned in favor of themselves and all the other members of the said consolidated tribe of Indians, and that they have done nothing so far, and will do nothing in the future that will in any manner prejudice their rights to recover a judgment in said suit.

KO-MAL-TY. his × mark.

POOR BEAR. his × mark.

LITTLE BOW. his × mark.

Attest:

G. W. HICKS.

G. B. SUTTON.

Subscribed and sworn to before J. P. Whatley, a notary public in and for Kiowa county, Oklahoma Territory, this 19th day of September, 1902.

UNITED STATES OF AMERICA, }
Territory of Oklahoma, } ss:

Willie Monay, being first duly sworn according to law, deposes and says: That he speaks and writes the English language and understands the same, and speaks and understands the Kiowa Indian language, being a member of

the Kiowa tribe of Indians in the Territory of Oklahoma, and of the consolidated tribe of Comanche, Kiowa and Apache Indians in the same Territory.

The affiant further states that he correctly interpreted the foregoing statement to Ko-Mal-Ty, Little Bow and Poor Bear, in which the last-named persons state among other matters that they have accepted no part of the purchase price provided by the United States for the surplus lands of the said consolidated tribe of Indians. The affiant believes that Ko-Mal-Ty, Little Bow and Poor Bear fully understand the nature and purport of the affidavit referred to before signing the same, and that it was signed by them in the affiant's presence, after a correct and complete interpretation of the same to them.

WILLIE MONAY.

Attest:

Subscribed and sworn to before me, a notary public in and for Kiowa county, Oklahoma Territory, this 19th day of September, 1902.

J. P. WHATLEY,
Notary Public in and for Kiowa County,
Oklahoma Territory.

My commission as notary public expires September 5, 1903.

LETTERS.

I.

Big Tree to the President.

MOUNTAIN VIEW, OKLA.,
April 25, 1902.

PRESIDENT,
Washington, D. C.

DEAR FRIEND: Now my friend I will now tell you know just how my heart is and believe me truly and now I am in a different road and I'll tell you know you are like a great father which is in heaven but you ruled over us Indians and the father looks down on his children and sees what we do and now I am writing this letter to let you know I am your friend and brother through Christ our Saviour. Very long time ago I was wild but now I am in a good road and I have never meet you and do not know your face but I'll tell you some thing which you must believe and try to find me a better road for your peoples and I have seen with mine eyes here and nothing is getting along right and God looks down on you and sees if you are doing right.

Agent has treat us wrong like a dog and he takes lease money from us and would not pay us and we can not tell any body that can help us through so now I am writing to you to tell you to see this letter and believe truly, and now while I am telling you I am not a drunkard or Ghost dance and I have only one wife not two and I am walking in the foot steps of my Saviour so believe me. And if

you should help his children he will bless you more and more every day.

I am very poor but I am letting you know believe me,

As a true friend,

BIG TREE,

Mountain View, Okla. Terr.

II.

Lone Wolf to Mr. Springer.

HOBART, O. T., *April* 28, 1902.

HON. WM. M. SPRINGER,

Washington, D. C.

DEAR SIR: On the 22d day of April, 1902, the Council of the Chiefs of the Kiowa, Comanche and Apache tribes met at Anadarko, O. T.

Present, Lone Wolf, Chief of the Kiowas, and other chiefs.

It was decreed by the Council that they wish you to proceed in the cause under consideration in the Supreme Court of the United States, and do all you can for its success.

The Indian Agent at Anadarko got angry, and left the Council when $2.50 was mentioned instead of $1.25.

Please present petition if you think there is hope.

his
LONE × WOLF,
mark.

Chief of Kiowas.

Witness:

A. M. LOCKE.

III.

Nahwats to Mr. Springer.

FORT SILL, O. T., *April* 23, 1902.

WILLIAM M. SPRINGER,

DEAR FRIEND: I am very much pleased with your kind and welcome letter which I received a few days ago. I tell all our friends about your letter and they thought you was the best friend of all. They keep a going with their signed and now they thinking about get money by next month On this letter I would made all the report that I know of. Lots of the Indians don't sign they names and all the Indian traders got mad with them because they didn't signed their names for the money. The traders told us if we dont sign we can't get no money until about two years. Thats all the trouble they made. If the Indian dont sign for money the traders wont let him make any creded. And we cant get no wire for our allotment unless we sign the paper they has got. My own allotment is ready to fence and I had a ferce farmer at Fort Sill to inspect a post around my allotment and he gave me an order to get wire at Anadarko where the Indian Agent is. I went over their very glad and Col. James F. Randlett ask me what I want, I told him that I got order here with me for the wire and I gave it him the letter and he opened the letter and read it and he said to me if I am going to sign for the money he would give me the wire. If you dont signed you can't get no wire. Thats what he said to me when I was at Anadarko. All the Indian traders and indian agent says you can't do nothing for us, They said the only thing you want is all our money for

the land. We tread [trade] our names for the wire and its makes me feel off bad because none of the workers here didn't like the indians who are not signed for the money. If you are wish you can report to indian departments We feel we didn't got nobody to look after us. Last Saturday Col. J. F. Randlett was here for the indians to sign him and Quanah Parker, The same day while they signed Quanah Parker told to the indians who are signed that Eschiti wasn't Chief any more their discharge him, and he assured and found it out about that. They talks bad about you and also about us. The Indians who are signe they makes fun of us to. And I want you to tell me what we are going to do about it, Springer please tell me when we are going get any money. You see the indian traders wont let us make any creded and we just thinking what we are going to do when they doing us that way. They dont gave us nothing but the indians who are signe. W. M. Springer My name is Willie Ahdosy assistant farmer at Fort Sill. Nahwats told me to answer your letter for him. I didn't signe and the agent say why I didn't signe and I told the agent because I signed lots and my signe dont do me a good. And I think any self that they going to dis charge me for been I am assistant farmer. They dont get your letter soon I guess they keep it in the P. O. to long. This is the only letter we got soon. You wrote a letter to Mar-Mo-Sook-Car-wer on 8 of March and we receive it on 19 of April and I wish for you to address to me My brother Ernest Ahdosy write for Nahwats the other time. We would very glad for you come down any time you want. What are we going to do about the big pasture south of Fort Sill. Col. J. F. Randlett told the indians to put stock in big pasture and he said the indians have to pay dollar a head for such stock every year and I like

to found it out if you know anything about it please write down and tell me all about it.

Excuse me for any misstak.

Answer soon as possibly can.

Your true NAHWATS.

Write by Willie Ahdosy. Write me a letter.

IV.

Lone Wolf and Sixteen Others to Mr. Springer.

ANADARKO, OKLAHOMA, *July* 13, 1902.

Judge W. M. SPRINGER,

1416 *F St. N. W., Washington, D. C.*

GOOD FRIEND: We, the undersigned members of the Kiowa and Comanche tribes, wish to write you concerning our affairs. We think we ought to have by rights the say so in some things, but the way the things are running we have no rights whatever.

We thought we have plenty of grass money, but Agent Randlett tells us that we have none.

A few weeks ago there was a paper circulated among our people for signatures, the paper was gotten up by Agent Randlett, we do not know to this day the contents of the above-mentioned paper, there for we ask you to look up the paper and let us know the contents of the same.

We want a good inspector to come to this place so that we might have a chance to show up the wrongs that was and is being done us.

When you write remember to address a letter to Say-Co-Da, an Apache for the Apaches.

We want an inspector to come, and when one comes

30078

we will show that our present agent is not fit to be over us who needed a wise man to lead and rule us.

LONE WOLF,
Chief of Kiowas.

KOMALTY. his × mark

WO-HAN. his × mark

BIG TREE. his × mark.

KO-TE-BO. his × mark.

JACK-LONE WOLF. his × mark

E. M. FULLER. his × mark.

AH-TAPE-TY.

ESHITIE, *Chief.*

LOUIS FULLER,
Interpreter for Comanches.

HUMMING BIRD.

KIOWA JIMMY.

GEO. CHAT.

SPOTTED BIRD.

LITTLE BOW.

ELK TONGUE.

TOU-WI-CAR-NE.

Address Say-Co-Da at Apache, Caddo Co., Okla. T.

V.

Lone Wolf and Six Others to Mr. Springer.

ANADARKO, OKLA., *Feb.* 19, 1902.

Judge WM. M. SPRINGER,
Washington, D. C.

FRIEND SPRINGER: Since Monday the Indians have been signing a petition to Secretary to pay out at once the $500,000 for our sulpus land.

Randlett and his pets Quanah and Ah-pe-ah-ton have been watching for this chance. They have resorted to their old tricks lieing.

They have told the Indians that if they (Indians) do not sign the petition they would be out of their money for good. That not a cent of the money for their land would be paid.

The Indians being weak after the small payment which was made a few days ago they have secure many names. You will find, if you had a chance to see the petition, the names of some of the signer to the papers you have, but in all such cases the trio did some smoth talking to get the names.

Another thing the trio told that if the Indians did not sign the petition they would lose the 480,000 acres set aside for their common use.

We understand that the Commissioner of Indian Affairs have given permission for a delegation to visit Washington City. And that Randlett has given his pets Quanah and Ah-pe-ah-ton permission to go to Washington. Why should not one of our people go? See Jones about this.

30079

Wire if necessary as the delegation intends to leave as soon as the signing was over.

Excuse the poor paper.

Respectfully,

LONE WOLF,
WATER-MAN,
HUMMING BIRD,
KO-MAL-TY,
KO-TE-BO,
WHITE BUFFALO,
BIG TREE.

VI.

Big Tree to Mr. Springer.

MOUNTAIN VIEW, OKLA., *April* 25, 1902.

WILLIAM M. SPRINGER,
Kellogg Building,
1416 *F Street, Washington, D. C.*

DEAR FRIEND: We all received your letters and are so glad to hear from our kind friend. Now I will tell you about the council because I seen it with my own eyes and what the Agent said to us all. And now we talked to the Agent about the cattles grazing on our allotments and Oh, he is very mad and he talked bad but we just wait for him to quit and then we talked to him again, and then the Agent got up and said before we got through talking your Indians that comes here you seem to make me mad and I suppose you want to tell your lawyer about it but I do not care you can tell him if you like. That is what the Agent said. And then I said now Agent listen to me nicely and see what I tell you dont kick about the Lawyer for I am not talking about that.

There are many Agents here but they are all good but this Agent is not good and I suppose your people sent him to treat us wrong and has treated us like a dog.

And now the Indians has told us that the Agent told them they would receive money and now they dont write there name on the paper. He gives wire when the Indians put their names on a paper and now is it right for him to do it? Did the people there tell him to sell wire for names and did they tell him to sell beef to Comanche for names. He went over there and killed two cows and was selling beef for names this is what the Comanche were told us all.

Now this all I'll tell you. I send you a letter from Agent what he said and when you write send it back when you through reading.

Your truly friend,

BIG TREE,
Mountain View, Oklahoma.

P. S.—Copy this letter and send it to the President.

[NOTE.—The letter of Agent Randlett, referred to in the above letter, is printed below.]

VII.

Agent Randlett to Big Tree.

JPB. DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
KIOWA AGENCY,
ANADARKO, OKLAHOMA, *April* 4, 1902.

BIG TREE (Kiowa Indian),
Mountain View, Oklahoma.

MY FRIEND: I have your letter wherein you complain that you have not received lease money on your allotments. This will inform you that I have not yet received

payments on but a few of the leases that have been made on allotted lands, and have not yet made any payments to the Indians on their leases. When the lease money has all been paid in, regular rolls will be made up in the Agency office and Indians will be paid in same way the regular grass payments have been made. Each Indian will receive the rent money from his own allotment.

I do not understand what you mean by the cowboys paying Elk Creek Indians, as no one has a right to make a lease with an Indian unless he comes to the office and has the lease made in due form, as is required by the law governing such cases, and white people who enter into contracts with Indians, disregarding the authority of the Agency, will be ejected from the Indian lands.

It appears that yourself and a few others of the Kiowas are determined not to pay proper respect to Agency authority and to make the duties of your agent as disagreeable as you can.

I am always pleased to do for you and the disaffected Kiowas the same as I do for those who are loyal to me and take my advice, and I have borne with patience such impudence as is contained in the letter to which this replies; however, now I am beginning to feel that you and the others of your kind are entitled to very little sympathy from me, and now have to say to you that unless you can pay to me proper respect in the letters you send me I must decline to notice them.

You and your associates are working in a way that, if continued in, will bring great hardship to the tribes to which you belong. While it appears to be of no use to advise you, I feel it my duty to say that you will surely see the day when you will regret that you refused to accept my advice.

Your friend,

JAMES F. RANDLETT,

Lt.-Col. U. S. A., U. S. Indian Agent.

VIII.

William Tivis to Mr. Springer.

RUSH SPRING, I. T., *April 2nd*, 1902.

DEAR SIR:

Mr. William M. Springer.

It has been a long time since I heard from you and I would like to hear from you now.

I expect you know how the Agent is getting the names of some Indians. Some of them have to signed it in order to get some wires, if they dont sign it I guess they wont get no wires.

Please let me hear from you soon. I expect they are still working to get more names.

I am working on farm.

From yours,

WILLIAM TIVIS.

[NOTE.—William Tivis is an Indian, and one of the complainants named in the bill of complaint.]

IX.

Eschiti, Comanche Chief, to Mr. Springer.

COMANCHE INDIAN TERRITORY,
Jany. the 11, 1902.

MY DEAR MR. SPRINGER: You letter of the 27th of Dec. last, is now on my hands. We wish you success in our business. We have had not a General Council. I told my people about your letter. We will not do anything to mislead our attorney. We will not accept the $50 dol-

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lars. I meet Quannah Parker the other day and had a conversation with him. He said Eschiti I have heard that Mr. Springer is to prevent us from getting land money, which is $50. I believe that if I and you go and see the Indian Agent and ask for our money he will give it to us. I told Quannah that I would not accept the $50 dollars unless my attorney advise me to do so. The grass money we want it. We hope to hear from you soon.

Your friend,

ESCHITI,
Comanche Chief.

(When write send the mail to the care of S. D. Caerday, Comanche I. T.)

X.

Lone Wolf to Mr. Springer.

HOBART, OKLA., *Dec.* 27, 1901.

Judge WM. M. SPRINGER,
Washington, D. C.

MY DEAR FRIEND: In my last letter to you I said that I would write to you about a council to be held the following Monday, as soon as the council was over.

I would have written had I been able to find a person to do the writing for me. Christmas was another cause which delayed this letter.

At the above-mentioned council I was instructed to write to you and state that the Kiowas have decided to go to the agent's office and say to him that the Indians will not accept any part of the money which the Government intended to pay for our land which the white settlers have taken up.

We want to have this matter righted before we will accept a cent of the Government's money. We wish you and our friends in Congress to help us as much as they and you can.

We believe that, while everything seems to be against us, we will succeed. There is just God who rules the affairs of this Government.

We feel that our land is worth more than $1.00 per acre. We think its worth is $2.50 an acre. We intend to fight this to the bitter end.

The Government officials need not think that they can make us give up fight by threats. The land is ours and have a right to fight for it, as Washington did for these United States.

We feel that this matter is of great importance to us and to the Government, hence we expected our friends to treat this matter as such.

For the reasons mentioned above, I spent much of my time in Washington trying to help my people. I trust and believe that this will come out right.

Keep us inform of your doings and other matters.

Your friend,

LONE WOLF.

XI.

Spotted Bird to Mr. Springer.

HOBART, I. T., *Sept.* 13, 1902.

WM. M. SPRINGER,

DEAR FRIEND: Now I will write to you and tell you that I want some help from you, and the commissary of that I will do what I wanted. Last year I leased my land to a white man by the name of Lily, the agent said for

as to lease lands so we will get some money for our living and so I lease same, and the agent told us that he was going to pay us some time in July but he did not pay me yet, and that is what I am going to tell you about. When the agent pay out the land money, I am the one that did not get it and so that is why he did not pay me the lease money. I thought I would get the money and get some thing what I needed but the agent did not pay me and so help me as soon as you find this letter. Why is it that the agent did not pay me help me and do all you can, so I will get my money so you both help me that I will get money soon, for I need it very much. Help me all you can. I am the brother of Lone Wolf.

SPOTTED BIRD,
Your friend.

XII.

Lone Wolf to Mr. Springer.

HOBART, O. T., *Aug.* 18, 1902.

WM. M. SPRINGER,

DEAR FRIEND: I have received your letter and I was glad to hear from my friend again awhile back I sent telegram to you and I felt very glad, but from there when I did not hear from you I felt as though I was blind, but when I heard from you again I felt as though you gave me a light in my eyes. It was you that was telling me to be patient and so I have took your word and did what you have told me to do and there are twenty-four men that have did the same, as I am we are trying to do what is right for us and are trying to be strong we dont listen

to the people what they say, and did not accept the money because we believe what you say.

The agent Randlett thinks we are little children and these man that are on our side dont like it and so they are trying to be strong. We want what is right and think that God will protect us from all evil. When I was up there to Washington they sent me over there to do what was right for us to do but now the Agent is trying to take away, all the men that were on our side and the Indian when they hear what he say they believe him and do what he told them but I say again that he thinks we are little children and he do what ever he pleases. And we dont listen to him It was them that told me to the work and I know that my name is in the law, but they have turned back and there are twenty-four men that did not do what they are doing because we know that you are right and to do what you tell us to do, and what is right. The Agent told us that, we are not going to get any money if we dont get what he is giving out now and he told us that we are not going to get any more afterwards if we dont get what he is giving out but we dont care we are doing what you have told us and are not afraid, and when you are up to Washington do what is right and when you know anything write to us for we always feel happy when we hear from you. Hand this to all that you know are right and give my love to all I know.

Your noble friend,

LONE WOLF.

Written by his daughter Ahtape.

XIII.

E. M. Fuller to Mr. Springer.

ANADARKO, O. T., *July* 30, 1902.

HON. W. M. SPRINGER,
Washington, D. C.

Dear Sir as a citizen of this country and my wife a member of the Comanche Indian and being interested and offiliated with them and would like to be posted in the Indian affairs at Washington 1st Will say that wee are deprived of all information that wee think wee should be in titled to at this office wee are now in a Small council of which you will see the proceedings of) with this letter as there is a few Indians has refused to receive any money on the grounds that the agent informs some of them that this is land money that is being paid them and that this fifty dollars is there first payment on the land and other he informs that it is grass money now wee dont understand the reason or the motive the agent has in telling one part one thing and the rest rite to the reversed there is a good number and I think the majority of the Indians have come to the conclusion that our agent is not our friend and useing us and his office for purposes not to our interest I am in possession of your letter of July 19th to Miss Big Tree so here you state that there was $35,000 of this money that was grass money and the 37,500 was land money pleas explan this to me now if this is grass money those Indians are very much in need of money) I would be very glad to corispond with you in the matter as I can furnish you with a grate deal of information when you desire the same

Hoping to hear from you soo your ever good Obt

E M FULLER

Apache, O. T.